

Frank R. Ellerbe, III
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 844
COLUMBIA, SOUTH CAROLINA 29202

October 28, 2011

PH
(803) 779-8900 | (803) 227-1112 *direct*

FAX
(803) 744-1556

fellerbe@robinsonlaw.com

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk / Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

**Re: Time Warner Cable Information Services (South Carolina), LLC's
Arbitration Proceedings with Farmers Telephone Cooperative, Inc., Fort
Mill Telephone Co., Home Telephone Co, Inc. and PBT Telecom, Inc.
PSC Docket Nos. 2011-243-C; 2011-244 C; 2011-245-C and 2011-246-C**

Dear Ms. Boyd:

Enclosed for filing on behalf of Time Warner Cable Information Services (South Carolina), LLC, please find a Petition for Reconsideration of Order No 2011-765. By copy of this letter we are serving the same on counsel for the ILECs and the S.C. Office of Regulatory Staff. Should you have any questions, please contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

/tch

Enclosure

cc/enc: C. Lessie Hammonds, Esquire (via email & U.S. Mail)
Jeffrey Nelson, Esquire (via email & U.S. Mail)
M. John Bowen, Jr., Esquire (via email & U.S. Mail)
Margaret M. Fox, Esquire (via email & U.S. Mail)
Julie P. Laine, Group Vice President & Chief Counsel - Regulatory (via email)
Maribeth Bailey, Senior Director Interconnection Policy – Regulatory (via email)

RECEIVED

PSC SC
MAIL / DMS

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket Nos. 2011-243-C, 2011-244-C, 2011-245-C, and 2011-246-C

**Docket No. 2011-243-C -- Petition for
Arbitration of Interconnection
Agreement between Time Warner Cable
Information Services (South Carolina), LLC,
doing business as Time Warner Cable and
Farmers Telephone Cooperative, Inc.**

**Docket No. 2011-244-C -- Petition for
Arbitration of Interconnection
Agreement between Time Warner Cable
Information Services (South Carolina), LLC,
doing business as Time Warner Cable and
Fort Mill Telephone Company d/b/a
Comporium Communications**

**Docket No. 2011-245-C -- Petition for
Arbitration of Interconnection
Agreement between Time Warner Cable
Information Services (South Carolina), LLC,
doing business as Time Warner Cable and
Home Telephone Co., Inc.**

and

**Docket No. 2011-246-C - Petition for
Arbitration of Interconnection
Agreement between Time Warner Cable
Information Services (South Carolina), LLC,
doing business as Time Warner Cable and
PBT Telecom, Inc.**

**PETITION FOR
RECONSIDERATION**

Pursuant to S.C. Code Ann. Section 58-9-1200 and 26 S.C. Code Regs. 103-854, Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable ("Time Warner Cable" or "the Company"), petitions the Public Service Commission of

South Carolina (“Commission”) to rehear or reconsider its findings and conclusions in Order Number 2011-765. Time Warner Cable requests that the Commission enter an Order on Reconsideration that finds and concludes that Time Warner Cable is a telecommunications carrier providing telecommunications services for purposes of federal law and therefore is entitled to interconnect and exchange traffic with Farmers Telephone Cooperative, Inc. (“Farmers”), Fort Mill Telephone Company (“Fort Mill”), Home Telephone Co., Inc. (“Home”), and PBT Telecom, Inc. (“PBT”) (collectively, “RLECs”) pursuant to Sections 251(a) and (b) of the Federal Communications Act of 1934, as amended (“Act”).

SUMMARY OF TIME WARNER CABLE’S POSITION

Order Number 2011-765 is contrary to federal law and inconsistent with the Commission’s prior orders. Congress enacted the Telecommunications Act of 1996 (“1996 Act”) to open monopoly markets to competition. Among other things, the 1996 Act added Section 251 to the Communications Act, 47 U.S.C. § 251, which provides a graduated set of interconnection requirements and other obligations designed to foster competition in telecommunications markets.¹

Time Warner Cable clearly is eligible to interconnect and exchange local telecommunications traffic with the RLECs pursuant to these pro-competitive provisions. Time Warner Cable obtained a certificate of public convenience and necessity (“Certificate”) from the Commission authorizing it to provide local and interexchange telecommunications services as a competitive local exchange carrier (“CLEC”). The Company operates as a regulated CLEC offering services pursuant to its approved tariff on file with the Commission. The Federal

¹ *In the Matter of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253, Declaratory Ruling, FCC 11-83, WC Docket No. 10-143, adopted May 25, 2011 (“CRC Declaratory Ruling”).*

Communications Commission (“FCC”) has made clear that an entity’s possession of a Certificate and its publication of tariffs constitute sufficient evidence of its status as a telecommunications carrier under federal law, not just state law. Thus, the requisite findings to permit interconnection and the exchange of traffic here have been met.

ARGUMENT

Because Time Warner Cable has assumed all of the duties and obligations of a regulated telecommunications carrier in South Carolina, Time Warner Cable is entitled to the rights bestowed on a telecommunications carrier under Sections 251 and 252 of the Act.

The Commission previously found that Time Warner Cable is a telecommunications carrier authorized to provide telecommunications service under state law. However, in Order Number 2011-765, the Commission found that Time Warner Cable is not entitled to the corresponding interconnection rights under federal law because it provides retail telephone service using voice-over Internet Protocol (“VoIP”) technology, and the FCC has not conclusively resolved the regulatory classification of VoIP services.

The FCC has ruled that, although certain voice providers that use VoIP technology may not be *compelled* to operate as telecommunications carriers, they are free to do so, as long as they hold themselves out as common carriers and comply with applicable regulations. In turn, VoIP-based providers that elect to operate as telecommunications carriers are entitled to all of the rights bestowed on such carriers under Sections 251 and 252 of the Communications Act. The unsettled statutory classification of interconnected VoIP service—whether as a matter of state or federal law—is immaterial in this case because Time Warner Cable already operates as a regulated telecommunications carrier in South Carolina.

The FCC also has made clear that an entity like Time Warner Cable can establish its status as a telecommunications carrier under federal law by obtaining a Certificate from a state

commission and by publishing a tariff in the state, as the Company has done in South Carolina. In particular, the FCC has held that “if a provider of interconnected VoIP holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements,” it is entitled to invoke the rights conferred under Section 251.² Time Warner Cable relies on the FCC’s decisions in *Fiber Techs. Network, L.L.C. v. N. Pittsburgh Tel. Co.* and *Bright House Networks, LLC v. Verizon Cal., Inc.*, in which the FCC made clear that an entity’s possession of a Certificate and its publication of tariffs constitute sufficient evidence of its status as a telecommunications carrier under federal law, not just under state law. The FCC has left it to VoIP providers—not state commissions—to determine whether to seek interconnection themselves, through an affiliate, or through an unaffiliated third party. The FCC also has ruled that CLECs such as Time Warner Cable are entitled to interconnect for the specific purpose of exchanging VoIP traffic.³

In short, a provider that operates as a regulated telecommunications carrier for state law purposes also is a telecommunications carrier for federal law purposes; no further showing is necessary.

CONCLUSION


For the reasons set forth above, the conclusion that Time Warner Cable is not a “telecommunications carrier” offering “telecommunications service” as defined in the Communications Act for purposes of Section 251 interconnection violates federal law. Time Warner Cable requests that the Commission reconsider its rulings in Order No. 2011-765.

² *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 38 n.128 (2005) (“*IP-Enabled Services Order*”).

³ *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

Dated this 28th day of October, 2011.

ROBINSON, MCFADDEN & MOORE, P.C.

By: 

Frank R. Ellerbe, III
Bonnie D. Shealy
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, Sc 29202
Telephone: (803) 779-8900
fellerbe@robinsonlaw.com
bshealy@robinsonlaw.com

Attorneys for Time Warner Cable Information
Services (South Carolina), LLC

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In the Matter of)	
)	
Petition for Arbitration of Interconnection)	
Agreement between Time Warner Cable)	Docket No. 2011-243-C
Information Services (South Carolina), LLC,)	
doing business as Time Warner Cable and)	
Farmers Telephone Cooperative, Inc.)	

In the Matter of)	
)	
Petition for Arbitration of Interconnection)	Docket No. 2011-244-C
Agreement between Time Warner Cable)	
Information Services (South Carolina), LLC,)	
doing business as Time Warner Cable and)	
Fort Mill Telephone Company)	

In the Matter of)	
)	
Petition for Arbitration of Interconnection)	Docket No. 2011-245-C
Agreement between Time Warner Cable)	
Information Services (South Carolina), LLC,)	
doing business as Time Warner Cable and)	
Home Telephone Co., Inc.)	

In the Matter of)	
)	
Petition for Arbitration of Interconnection)	Docket No. 2011-246-C
Agreement between Time Warner Cable)	
Information Services (South Carolina), LLC,)	
doing business as Time Warner Cable and)	
PBT Telecom, Inc.)	

CERTIFICATE OF SERVICE

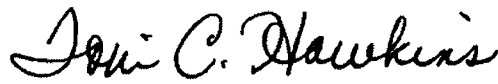
This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Petition for Reconsideration on behalf of Time Warner Cable Information Services**

(South Carolina), LLC in the dockets referenced above by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

C. Lessie Hammonds, Esquire
Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Dated at Columbia, South Carolina this 28th day of October, 2011.

A handwritten signature in black ink that reads "Toni C. Hawkins". The signature is written in a cursive, flowing style.

Toni C. Hawkins